

## **Commercial Availability Petition By Levi Strauss And Co.**

### **Commercial Availability Request**

On December 12, 2002, the Committee for the Implementation of Textile Agreements (CITA) received a petition from Levi Strauss and Co. (Levi Strauss) alleging that certain ultra fine Lycra crochet outer fusible material with a fold line that is knitted into the fabric and a fine Lycra crochet inner fusible material with an adhesive coating that is applied after going through a finishing process to remove all shrinkage from the product, classified under item 5903.90.2500 of the Harmonized Tariff Schedule of the United States (HTSUS), for use in apparel articles (waistbands), cannot be supplied by the domestic industry in commercial quantities in a timely manner. It requested that apparel articles of U.S.-formed fabric containing such waistband fabric be eligible for preferential treatment under the United States - Caribbean Basin Trade Partnership Act (CBTPA). On December 19, 2002, CITA published a Federal Register notice requesting public comments on the petition.

### **Public Comment Received**

National Textile Association (NTA): NTA opposes the petition. NTA claims that certain members within their association produce elastomeric waistband fabrics using U.S.-produced inputs. Also, NTA believes that there are finishing processes substitutable for the patented finishing process Levi Strauss describes in its petition. Further, NTA believes that, though the patented finishing process is not currently licensed in the United States, the patent holder has the option of licensing the patent with a U.S. textile manufacturer.

### **Advice and Consultations**

On January 8, 2003, CITA and USTR requested the advice of the Industry Sector Advisory Committee (ISAC) for Wholesaling and Retailing (ISAC 17) and the ISAC for Textiles and Apparel (ISAC 15). Neither committee submitted advice regarding the petition.

On January 8, 2003, CITA and USTR offered to hold consultations with the Senate Finance Committee and the House Ways and Means Committee. Neither committee has requested consultations on this request.

USTR requested the advice of the International Trade Commission on the probable economic effects on the domestic industry of granting the petition. The ITC concluded that approving the request would likely have a negligible effect on U.S. producers of such fabrics, U.S. producers of fibers used in these fabrics, apparel firms producing the apparel domestically, and their workers.

### **Analysis**

The petitioner is requesting a determination on two patented, coated fabrics that are used in waistbands. One is an outer fusible, 45 mm wide, knitted, stretch elastomeric fabric containing 49 percent polyester, 43 percent elastane and 8 percent 4.4-ounce nylon. A fold line is knitted

into the fabric. This fabric undergoes a patented process that removes all shrinkage while at the same time applying an adhesive coating. This process provides to the fabric excellent stretch and recovery properties and low extension levels. The coating adheres to 100 percent cotton and polyester/cotton blends. The bond is such that it lasts through wear and repeated home washing.

The second fabric is an inner fusible 40 mm wide synthetic fiber, stretch elastomeric fabric containing 80 percent type 6 nylon and 20 percent 4.4-ounce spandex. This fabric undergoes a patented process that removes all shrinkage while at the same time applying an adhesive coating. This process provides the fabric with excellent stretch and recovery properties and low extension levels. The coating adheres to 100 percent cotton and polyester/cotton blends. The bond is such that it lasts through wear and repeated home washing.

Both interlining fabrics are classifiable in HTS 5903.90.2500, which covers coated textile fabrics of man-made fibers. Samples of both fabrics were provided. In describing the product, the petitioner uses the trademark name 'Lycra.' CITA cannot make a determination on a trademark name, so the term 'elastomeric' has been substituted. CITA also cannot make a determination on a patented process. The fabrics that CITA is reviewing are narrow, elastomeric fabrics containing a specific fiber/yarn blend, having an adhesive coating, meeting the specific characteristics described by the petitioner, and classifiable in HTS 5903.90.2500.

According to the petitioner, the superior characteristics of these fabrics (for use in waistbands) result from application of the patented process to the knitted fabrics specified above. The petitioner provided information on its unsuccessful attempts to contact seven U.S. manufacturers to obtain the specified knitted fabrics. Further, the petitioner subjected those fabrics that are available in the United States to the patented process, and provided four samples demonstrating the unsatisfactory results of this effort. The petitioner claims that the waistband fabrics are not available from U.S. producers because the owner of the patented process has not licensed it for use in the United States.

Based on our review of the information provided in the petition, Commerce concludes that the domestic industry cannot supply the coated, elastomeric waistband fabrics identified in the petition. Thus, the second question for CITA is whether the domestic industry can supply a substitutable product in commercial quantities in a timely manner.

### **Substitutable Products**

As set forth in CITA's Procedures in Considering Requests Under the Textile and Apparel 'Short Supply' Provisions (66 FR 13502), CITA will consider whether other products that are supplied by the domestic industry in commercial quantities in a timely manner are substitutable for the subject product for purposes of the intended use. NTA claims that its member companies produce elastomeric fabrics and elastomeric waistband fabrics of the type or substitutable for the type described in the petition. It doubts the petitioner's claims that there is no substitutable finishing process equal to the patented process described by the petitioner. However, NTA does not provide any information on another process. NTA did not provide any samples of substitutable products. NTA suggested that we contact George C. Moore Company about supplying a substitutable fabric. Mr. Gabriel Guay of George C. Moore Company informed us

that the company does not currently manufacture a product fitting the description of the fabrics at issue here, nor does it have the ability to apply adhesives. We also contacted certain textile finishing facilities to determine if any could produce a substitutable product. The companies that we contacted reviewed the petition and confirmed that they do not produce a substitutable product.

Based on our review of the information provided in the petition and the public comment and our contact with domestic manufacturers, CITA concludes that the domestic industry cannot supply a product substitutable for the coated, elastomeric waistband fabrics identified in the petition in commercial quantities in a timely manner.

### **Conclusion and Recommendation**

CITA has determined that the coated, elastomeric waistband fabrics described in the petition cannot be supplied by the domestic industry in commercial quantities in a timely manner.

S:tdd/commercial avail/levi/report and analysis to Congress

Prepared by R. Stetson, 01/17/2003, revised by J. Heinzen, Jan. 22, 2003

Clearance:

|                           |            |
|---------------------------|------------|
| CITA,                     | 02/03/2003 |
| J. Cobau/D. Williams,     | 02/05/2003 |
| P. Martello,              | 02/06/2003 |
| M. Hutchinson/J. Leonard, |            |